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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 531

DALLAS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3 ET AL.,
Petitioners,

vs.

CITY OF DALLAS, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

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To the Honorable Supreme Court of the United States:

Your petitioners are: Dallas County Water Control and Improvement District No. 3, a political subdivision and conservation district of the State of Texas organized and existing under Article XVI, Section 59 of the Constitution of Texas and Chapter 3A of Title 128, Vernon's Texas Civil Statutes, and its Directors, and Howard N. Naylor, M. P. Ruthenborg, H. J. Smasal, Hattie McCutcheon and husband, W. M. McCutcheon, private citizens and resident, property tax-paying voters of said District.

Respondents are: The City of Dallas, a municipal corporation; and the Mayor and nine Councilmen who compose

the governing body of that City, and who are sued only in their official capacities.

Petitioners respectfully show:

Summary Statement of the Matter Involved

Petitioners sued respondents in a state district court of Dallas County, Texas, seeking to enjoin the enforcement of an ordinance adopted by the Dallas city council purporting to annex to the City of Dallas all the territory within petitioner Water District, and certain adjacent territory, and another ordinance so adopted purporting to abolish petitioner Water District and authorizing the City to confiscate all of the properties and assets of the District consisting principally of a waterworks and sanitary sewer system and some Two Hundred Thousand ($200,000.00) Dollars in cash (R. 48). The suit also attacked the constitutionality of the Texas statute (Article 1175, Section 2, Vernon's Texas Civil Statutes) and the provision of the Dallas City Charter (Section 4a) which purport to authorize the city council to annex such territory by simple ordinance and also attacked the constitutionality of the Texas statute (Article 1182C-1, Vernon's Texas Civil Statutes) under which respondents claimed the right to abolish petitioner Water District and confiscate its properties and assets. Petitioners prayed for a temporary injunction in the trial court as well as a permanent injunction and certain declaratory relief (R. 12, 13).

At a preliminary hearing on the application for temporary injunction (R. 35, 41) the trial court acted on the verified bill and answer and the testimony of one witness, a director of the Water District, relating solely to the question of issuing the temporary injunction (R. 46 et seq.) and entered judgment denying the temporary injunction, disposing of all of the issues in the case as fully as though

there had been a hearing on the merits, and granted respondents a mandatory injunction against petitioners requiring petitioners to turn over all assets and properties of petitioner Water District to the City of Dallas (R. 35 et seq.).

Petitioners appealed directly to the Supreme Court of Texas which affirmed the judgment of the trial court (R. 60) and on November 8, 1950 overruled petitioners' motion for rehearing (R. 79).

The evidence in this case was never fully developed, the case was never set for trial on its merits, and no court has ever heard this case on its merits but the trial court's judgment which was affirmed by the Supreme Court of Texas effectively disposes of the entire subject matter of the lawsuit. (See judgment, R. 65 et seq.)

This suit records one of many atrocities committed by "Home Rule" cities in Texas in extending their boundaries to annex "adjacent" territory by the sole process of the city council enacting an ordinance declaring the territory annexed. As evidence of the great public importance of the questions here presented, and of the futility of seeking relief from the Supreme Court of Texas, the following examples are cited:

(a) The forceable annexation by the City of Sulphur Springs of a strip 800 feet wide and two miles long, extending perpendicular to existing city limits. *State v. City of Sulphur Springs*, 214 S. W. (2d) 663. (Error Dismissed.) Expressing complete dissatisfaction with the binding decisions of the Texas Supreme Court, the Texas Court of Civil Appeals, with each of the three judges writing separate opinions, reluctantly sustained the annexation ordinance, while branding it a legal fraud.

(b) The annexation by the City of Houston of a strip 100 feet wide and one-half mile long for the admitted and sole purpose of completing the encirclement of its

neighboring City of West University Place, thereby preventing its future expansion. *City of Houston v. State,* 176 S. W. (2d) 928 (Sup. Ct.)

(c) The inclusion within the boundaries of the City of Wichita Falls of a strip 100 feet wide and four miles long in order to make the city's boundaries "adjacent" to certain government military installations which were also annexed to the City. *The City of Wichita Falls v. Bowen.,* 182 S. W. (2d). (Sup. Ct.).

(d) The annexation by the City of Pasadena of a large tract of uninhabited prairie land four miles in width in order to annex a multi-million dollar refinery and chemical plant at the far edge of the annexed territory for the purpose of subjecting the annexed property to city taxes. *City of Pasadena v. State ex rel. Shell Oil Company et al.* (Unreported—on appeal to the Galveston Court of Civil Appeals).

(e) The annexation of a strip 400 feet wide and *sixteen miles* long by the City of Houston for the admitted purpose of "boxing in" the City of Pasadena.

(f) The overnight enlargement of the area within the City of La Porte (population 5,000) from four square miles to *fifty-two* square miles, more than 90 per cent of the forty-eight square miles added being uninhabited farm and grazing lands.

(g) The annexation by the City of Dallas (not here involved) of a strip of land *ten feet* wide and approximately *four miles* long in order to annex a large power plant and airplane factory at the end of the 10 foot strip.

In the case at bar, petitioner Water District consists of the unincorporated town of Pleasant Grove, with approximately 2000 homes and 7000 population (R. 53) and is separated from the corporate limits of Dallas by approximately two miles of Trinity River lowlands and farm and grazing lands which are substantially uninhabited (R. 8, 54). The District owns waterworks and sewer properties of the value of approximately $800,000.00 (R. 50) and the private

property which will be subjected to taxation by the City of Dallas is of the value of $7,000,000.00 (R. 51). The current tax rate of the City of Dallas is $1.85 on each $100.00 of assessed valuations (R. 51).

While under the City Charter provision relied upon by respondents, the residents of the annexed area were not entitled to a hearing on the proposed annexation, 1300 of them signed a petition protesting the annexation and 200 signed a petition favoring annexation (R. 57).

Jurisdictional Statement

This Honorable Court has jurisdiction under Section 344(b) of Title 28 of the United States Judicial Code because:

(a) It is specially set up and claimed that petitioners have been deprived of their property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, because they have been denied a full and fair hearing on the merits of this case.

(b) There is drawn in question the validity of statutes of the State of Texas on the grounds that they are repugnant to the Fourteenth Amendment to the Constitution of the United States; and

(c) It is specially set up and claimed that petitioners have been deprived of their property without due process of law and have been been denied the equal protection of the laws by the unlawful annexation of certain territory to the City of Dallas.

Federal Questions Presented

I

Did the judgment of the state district court which was affirmed by the State Supreme Court deny petitioners due process of law guaranteed by the Fourteenth Amendment,

by adjudicating all the issues on the merits of the case in a preliminary hearing on an application for temporary injunction in which petitioners were only entitled to introduce evidence on the issuance of the temporary injunction and were not privileged to introduce evidence on the merits?

II

Does the subjection of the individual petitioners' property to taxation by the City of Dallas by the forced annexation of such property to the corporate city boundaries under a state statute which purports to delegate this legislative function to the city carte blanche without setting up standards and guides or under a provision of the Texas Constitution which authorizes the City to "adopt or amend" its city charter, deprive such petitioners of their property without due process of law?

III

Does the singling out of the property of the individual petitioners for taxation by means of the forced annexation of such property to the City of Dallas while excluding other property similarly situated, deny such petitioners the equal protection of the law where such annexation was effected by a city ordinance adopted under the state statute or state constitutional provision mentioned in the next preceding question?

IV

Does the confiscation of all properties of petitioner Water District by the City of Dallas under a state statute which purports to authorize the city to take over the properties of such districts which are wholly annexed to the City, deny to the District the equal protection of the laws and due process of law, where the delegated authority to annex sets up no standards or guides but leaves to the caprice, whim

and unbridled discretion of the city council what territory, if any, shall be annexed, and whether or not the City shall destroy the District by embracing it?

Reasons Relied On for Allowance of Writ

I

Due process has been denied petitioners because their rights as set forth in their petition (R. 1 et seq.) in the trial court were finally adjudicated without a full and fair hearing.

In addition to permanent injunction and declaratory relief, petitioners prayed for a temporary injunction (R. 12, 13) to maintain the status quo pending trial on the merits. On the day the suit was filed (R. 17) the court issued a fiat to respondents to show cause on March 17, 1950 why a temporary injunction should not be issued (R. 14). On that date, a preliminary hearing was held on the sworn petition and answer (R. 35) and on the cursory testimony of one witness, C. E. Smith, a director of petitioner Water District who was called by petitioners for the sole purpose of proving the necessity for temporary injunction (R. 46). Respondents offered no evidence except by cross-examination of the witness Smith (R. 51). No evidence was offered by either side on the merits of the case. The case was not before the court on its merits.

At the conclusion of the evidence and arguments, the trial court entered judgment (R. 35-37), not only denying petitioners temporary injunction but:

> (a) Adjudging that the annexation ordinance was valid and that the territory described therein has been validly annexed to the City of Dallas;
>
> (b) Adjudging that the Water District has been abolished and the City has succeeded to its duties and responsibilities and the territory embraced by the

ordinance is under the jurisdiction of the City for all municipal purposes (including the power of taxation); and

(c) Ordering the Directors of the District to turn over all properties of the District to the City and enjoining them from interfering with the City in the administration of the District's properties and affairs (R. 36, 37).

On Respondent's subsequent motion (R. 38), the trial court entered a second order commanding the District Directors to turn over such properties forthwith and to issue bank warrants to the City for all District funds (R. 40). Since a bond in excess of $1,000,000 (Rule 364, Texas Rules of Civil Procedure) would have been necessary to supersede these judgments, the directors were compelled to comply with them.

Under Section 4a of the City Charter, all private property in the annexed area immediately became liable for taxes for 1950 and subsequent years, the ordinance being conveniently passed on December 30, 1949 (R. 17).

Petitioners alleged that the annexation ordinance was void for many reasons (R. 3-11), some of which raised fact questions on which they were entitled to a jury trial (Texas Constitution, Article I, Sec. 15). Particularly, petitioners alleged that the annexation ordinance is invalid and void because same is unreasonable and arbitrary in that the annexed lands owned by the individual petitioners are unplatted, rural agricultural and river bottom lands and would not in any manner be benefitted by annexation to the city and would be subject to city taxes to provide improvements and services which would be a benefit to other parts of the City but not to said lands or the inhabitants thereof (R. 7).

The precipitate judgment of the trial court on the preliminary hearing expelled petitioners from the halls of jus-

tice, the merits of their cause unheard, and their complaints have fallen on deaf ears in the State's highest court (R. 67). Due process of law requires a full and fair hearing.

II

If the ordinance of annexation was void for any one of the several reasons alleged by petitioners in the trial court, then the City of Dallas has no jurisdiction over the annexed territory and its acquisition of the District's properties and the subjection of the properties of the individual petitioners to the lien of city taxes with foreclosure and sale if the taxes are not paid, are confiscatory and constitute a taking of such property without due process of law. The singling out of petitioners' property to pay taxes to the City of Dallas (by operation of such ordinance) when other agricultural and grazing lands similarly situated are free of such burdens, denies to petitioners the equal protection of the laws.

The annexation ordinance was based upon Section 4a of the City Charter, reading in pertinent part as follows:

> "Section 4-(a). As an alternative method of enlarging or extending the corporate boundaries, the City Council shall have the power by ordinance to provide for the alteration and extension of said boundary limits, and the annexation of additional territory lying adjacent to the City, with or without the consent of the territory and the inhabitants annexed. Upon the introduction of any such ordinance in the City Council, it shall be published one time in the newspaper designated as the official newspaper of the City of Dallas, however amendments may be incorporated into the proposed ordinance without the necessity of publishing said amendments and without the necessity of republication of said ordinance as amended. The proposed ordinance shall not thereafter be finally acted upon until at least thirty (30) days have elapsed after the

publication thereof; and upon the final passage of any such ordinance, the boundary limits of the City shall thereafter be as fixed in such ordinance, and when any additional territory has been so annexed, same shall be a part of the City of Dallas, and the property situated therein shall bear its pro rata part of the taxes levied by the City, and the inhabitants thereof shall be entitled to all the rights and privileges of all the citizens and shall be bound by the acts, ordinances and resolutions of the City."

The case was tried in the trial court on the theory that this charter provision depended on Article 1175, Sec. 2, Revised Civil Statutes of Texas, 1925, for its validity. Petitioners denied (R. 4), respondents affirmed (R. 21), and the trial court sustained (R. 37), the constitutionality of this statute, which authorizes a "home-rule" city adopting its own charter to fix its boundaries and to annex "additional territory lying adjacent to said city, *according to such rules as may be provided by said charter.*" Petitioners attacked this statute as a delegation of legislative powers to such cities without requisite guides and standards, the determination of municipal boundaries admittedly being a pure legislative function.

The Supreme Court of Texas adopted a different theory to sustain the constitutionality of the annexation ordinance, holding that the "Home Rule Amendment" to the Constitution of Texas (Article XI, Section 5) grants to such cities the power of self-enlargement. The pertinent provisions of this amendment are as follows:

"Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent

> with the Constitution of the State, or of the general laws enacted by the Legislature of this State . . ."

This stretching of the language of the Constitution and the meaning of "home rule" is contrary to the fundamental principle that the powers of a municipal corporation are confined to the territory of its situs and that the determination of municipal boundaries is not a matter of local self government but is a legislative matter in which the State has an interest (For discussion of authorities, see R. 70-74). The legislature cannot delegate such power without providing proper standards and guides.

Irrespective of the correctness of the Supreme Court's decision on the meaning of the State Constitution, the fact remains that, assuming the existence of the power in the City of Dallas to annex adjacent territory by unilateral action, petitioners have not been given a chance to try out the fact question of whether this particular annexation ordinance is a valid exercise of that power or whether or not it is invalid because unreasonable and arbitrary or defective in any one of the ways alleged in its petition to which no court has yet lent its ear.

Conclusion

WHEREFORE, your petitioners respectfully pray that this application for writ of certiorari to the Supreme Court of Texas be granted and that the judgment of the state court be reversed and for such other and further relief to which petitioners shall be justly entitled.

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RESPONDENTS' BRIEF IN ANSWER TO PETITION FOR WRIT OF CERTIORARI

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